

August 5, 2004

PINELANDS COMMISSION

**Pinelands Comprehensive Management Plan
Land Capability Map; Vegetation; Fort Dix Consumer Electronics Recycling
Center Pilot Program**

**Proposed Amendments: N.J.A.C. 7:50-2.11, 5.3 and 6.27
Proposed New Rules: N.J.A.C. 7:50-10.28-10.30**

Authorized By:

_____/____/____
New Jersey Pinelands Commission,
John C. Stokes, Executive Director

Authority: N.J.S.A. 13:18A-6j

Calendar Reference: See Summary below for explanation of exception to calendar requirement

Proposal Number:

A **public hearing** concerning this proposal will be held on:

November 18, 2004 at 7:00 P.M.
Southampton Township Municipal Building
Route 206 and Retreat Road
Southampton, New Jersey

Submit written comments by regular mail, facsimile or e-mail by December 3, 2004 to:

Susan R. Grogan, P.P., AICP
Chief Planner
Pinelands Commission
P.O. Box 7
New Lisbon, NJ 08064
Facsimile: (609)894-7330
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The name and mailing address of the commenter must be submitted with all public comments.

The agency proposal follows:

Summary

The New Jersey Pinelands Commission proposes to amend subchapters 5, Minimum Standards for Land Uses and Intensities, and 7, Amendments to the Comprehensive Management Plan, of the Pinelands Comprehensive Management Plan (CMP). The Pinelands CMP has been guiding land use and development activities in the Pinelands since it took effect on January 14, 1981. Since that time, the CMP has been amended a number of times, most recently in April of 2004 through a set of amendments which established fees for development applications (see 35 N.J.R. 4411(a)).

The amendments now being proposed relate to four principal objectives: redesignation of an area in Ocean and Lacey Townships, Ocean County, from a Pinelands Rural Development Area to a Pinelands Forest Area; adjustment of Pinelands management area boundaries to reflect a recently executed settlement agreement involving lands within the Pinelands National Reserve; updating of the threatened and endangered plant list contained in the CMP; and establishment of a new pilot program for consumer electronics recycling facilities.

Redesignation of Oyster Creek, Ocean and Lacey Townships, Ocean County

Subchapter 5, Minimum Standards for Land Uses and Intensities, of the Pinelands Comprehensive Management Plan establishes requirements which govern the type, location and intensity of land uses permitted throughout the Pinelands. Part II of subchapter 5 establishes nine land use management areas and sets forth the goals, objectives and permitted uses for each. The boundaries of these management areas are provided on the Land Capability Map adopted as part of the CMP at N.J.A.C. 7:50-5.3(a)24.

Although refined over the years through the Commission's approval of municipal land use ordinances, the boundaries of the various management areas were established by the Commission in 1980 when the CMP was adopted. The management area delineation procedure began with the Commission's definition of what constituted the "essential character" of the Pinelands Protection Area (defined as that area located outside the legislatively-defined Pinelands Preservation Area). Seven criteria were developed: the presence of ecologically critical areas; undisturbed watersheds; wetlands; cranberry cultivation areas; areas of deep aquifer recharge; unique resources requiring high levels of protection; and public lands managed for resource protection or recreation. Undisturbed subwatersheds were drainages that had very little development in them (less than five percent), particularly development that degrades surface and groundwater quality and fragments the Pinelands ecosystem. Wetlands included cedar swamps, hardwood swamps, pitch pine lowland forests, bogs, inland marshes, and coastal marshes. Unique resources that require high levels of protection included the Pine Plains and a surrounding buffer zone and subwatersheds supporting characteristic Pinelands aquatic species. The presence of threatened and endangered species was one of the most important factors in determining the designation of a subwatershed as an ecologically critical area.

These seven components, and their mapped expressions, served as the determinants of the essential character of the Pinelands environment within the Protection Area. The delineation of areas of essential character provided the basis for the designation of Pinelands Forest Areas, largely undisturbed forest and coastal wetlands areas adjoining the Preservation Area and extending into the southern portion of the Pinelands. Designation of other management areas

followed, including Rural Development Areas which were generally defined as transitional areas separating the less developed, forested areas of the Pinelands from growth areas, serving as both buffers and reserves for future development. The identification of conflict areas was the last step. Conflict areas were areas where lands considered suitable for appropriate patterns of development overlapped with areas displaying essential character. When a conflict area that was classified as a Rural Development Area exhibited essential character as an undisturbed watershed or had greater than 75 percent wetlands or critical areas, it was reclassified as a Forest Area. Additionally, areas of less than 1,000 acres that did not exhibit essential character but were entirely surrounded by areas of essential character became Forest Areas.

Upon adoption of the CMP in 1980, the majority of the Oyster Creek watershed within the Pinelands Area in Ocean County was designated as either Forest Area (39 percent) or Rural Development Area (55 percent). Designation of the Rural Development Area, which was a conflict area, was due primarily to the presence of the Southern Ocean Landfill and its anticipated impacts on water quality.

In March of 2004, Commission staff issued a report on the Oyster Creek and Waretown Creek watersheds containing updated information on natural resources. The purpose of the report was to provide the data necessary for the Commission to make a determination as to whether the Oyster Creek watershed displays the essential character of the Pinelands. A copy of the report is posted on the Commission's web site at www.state.nj.us/pinelands. Upon consideration of the information provided in the report, the Commission determined that it would be

appropriate to reexamine the management area designations originally established by the CMP for both the Oyster Creek and Waretown Creek watersheds.

The affected area is located in Lacey and Ocean Townships, Ocean County, primarily west of the Garden State Parkway. The Oyster Creek watershed covers a large section of this area, with the Waretown Creek watershed covering the rest. The area comprises approximately 4,100 acres and is largely undeveloped, with less than two percent of the total acreage developed. Based on the zoning plans of the two municipalities, residential development is currently permitted in the area at densities ranging from one unit per five acres in Ocean Township to one unit per 11 acres in Lacey Township. Total theoretical residential zoning capacity in the area is approximately 374 units.

The Commission staff's March 2004 report found that the Oyster Creek watershed currently satisfies a number of the criteria used to define the essential character of the Pinelands, although this might not have been known when the CMP was adopted in 1980. Specifically, although the area was not recognized as an ecologically critical area in 1980, it is now clear that the Oyster Creek watershed is habitat for numerous threatened and endangered plant and animal species. With respect to undisturbed watersheds, nearly all drainage basins in the Oyster Creek are minimally disturbed and none of the drainages in the current Rural Development Area exceed the five-percent threshold set by the CMP. Likewise, the portion of the Waretown Creek watershed currently in the Rural Development Area is only 4.1% is developed. In addition, surface water quality data in Oyster Creek reflect that it is a minimally disturbed landscape and that it has Pinelands reference stream quality. Data for Waretown Creek also indicate only minimal signs of disturbance, possibly from runoff from the Garden State

Parkway and Route 9. It appears that the Southern Ocean Landfill has not affected the surface water quality of Oyster Creek.

Three other criteria also appear to be met. Wetlands comprise approximately 20 percent of that portion of the Oyster Creek watershed located in the Rural Development Area and approximately 27 percent of the Rural Development Area portion of Waretown Creek. This is typical of Pinelands basins that average 25 percent wetlands coverage. With respect to the presence of unique resources deserving of protection, the Commission staff's analysis found that the Oyster Creek watershed supports typical Pinelands aquatic communities. Among these communities are numerous records of several species listed as threatened or endangered by the Commission. Native Pinelands fish, anurans, and flora reflect the excellent water quality measured at this site. In addition, plant species characteristic of reference streams in the central Pinelands have been found along Waretown Creek at Route 9. Three species of native Pinelands fish and two species of native anurans were also found. Also, the northerly portion of the Oyster Creek watershed constitutes part of the watershed necessary to the ecological health of the Pine Plains. In terms of public lands managed for resource protection or recreation, there were none in the vicinity when the CMP was originally adopted. However, current information shows that Ocean County Park at Wells Mills (purchased in 1985) currently occupies nearly 1,000 acres in the Oyster Creek watershed. Total acreage in State or County ownership in the Rural Development Area portion of the Oyster Creek and Waretown Creek watersheds is just over 1,300 acres.

As was the case in 1980, the Oyster Creek and Waretown Creek watersheds do not appear to meet the remaining two criteria used to define

essential character, cranberry cultivation and areas of deep aquifer recharge. Less than one percent of the Oyster Creek watershed is in wetlands agriculture and the presence of a clay lens under almost all of the Rural Development Area portion of both subbasins eliminates deep aquifer recharge.

The new information made available to the Commission through the staff's March 2004 report strongly suggests that the area in question exhibits the essential character of the Pinelands and meets the criteria for designation as a Forest Area. The presence of an existing landfill was given a disproportionate amount of weight in 1980, resulting in the designation of this area as a Rural Development Area. It is now clear that the area demonstrates the characteristics associated with a Forest Area designation and is worthy of the enhanced protection that would be provided by such a management area designation. Permitted residential densities are significantly lower in Forest Areas (one unit per 15.8 acres of vacant upland) than they are in Rural Development Areas (one unit per 3.2 acres of vacant upland); permitted nonresidential uses are similarly much more limited in Forest Areas.

In order to accomplish a redesignation of management areas of this magnitude, the adoption of an amendment to the CMP is necessary. Therefore, the Land Capability Map at N.J.A.C. 7:50-5.3(a)24 is being amended to reflect a revision in Pinelands management area boundaries. The Oyster Creek and Waretown Creek watersheds, previously located in a Rural Development Area, will now be located in a Pinelands Forest Area.

Management area redesignations within the PNR

Portions of the Pinelands National Reserve are located outside the State-designated Pinelands Area. The Commission does not exercise direct regulatory jurisdiction to implement the policies of the CMP outside the State-designated Pinelands Area. However, the CMP does include land use and development policies governing the future use and development of lands within the entire Pinelands National Reserve Area, as is required by the Pinelands Protection Act which designates the Commission as the “planning entity” for the Pinelands National Reserve. In addition, sections 502(f)4 and 8 of the National Parks and Recreation Act of 1978, Pub.L. 95-625 (16 U.S.C. Section 471i(f)4 and 8) charge the Commission with the responsibility of preparing a management plan that details the ways in which local, State and Federal programs and policies may best be coordinated to promote the goals and policies of the management plan and assures that local government implementation of the management plan will ensure “the continued, uniform and consistent protection of” the entire Pinelands National Reserve. In order to meet this directive, Pinelands management areas were established for that portion of the Pinelands National Reserve located outside the State-designated Pinelands Area when the CMP was adopted in 1980. The boundaries of these management areas are depicted on the Land Capability Map adopted at N.J.A.C. 7:50-5.3(a)24. The Commission also entered into a Memorandum of Agreement with the Department of Environmental Protection under which the Department refers applications for development within the so-called “overlap area” to the Commission for review and comment as to the consistency of the applications with the CMP. The Commission thus serves in an advisory role to the Department in these matters.

The Commission is now proposing to amend the Land Capability Map by revising Pinelands management area boundaries in a portion of Manchester Township, Ocean County, which is located outside the Pinelands Area but within the Pinelands National Reserve. These revisions are being proposed in recognition of the recent execution of a settlement agreement between the Department of Environmental Protection, Hovsons, Inc. and the Commission. Under this settlement agreement, the construction of a 2,450-unit adult single family home community will be allowed on approximately 995 acres of previously mined land in Manchester Township, with an additional 6,475 acres of land in Manchester and Berkeley Townships dedicated to the State for open space preservation. Approximately half of the land to be dedicated for open space is located in the Pinelands Area with the remaining half in the Pinelands National Reserve, outside the Pinelands Area. The settlement agreement calls for Hovsons, Inc. to petition the State Planning Commission to designate the development area as a Planning Area 2 and the open space preservation area as a Planning Area 5. The Commission has indicated its support of these planning area changes via a letter dated June 16, 2004 to the Executive Director of the Office of Smart Growth. As further evidence of support, the Commission is proposing to amend its Land Capability Map so as to include all of the 995-acre development area in a Pinelands Regional Growth Area and the entirety of the open space preservation area in a Pinelands Forest Area. These revised management area boundaries appropriately reflect the permitted future use of lands authorized under the settlement agreement and should serve to prevent conflicts from arising between Pinelands management area and State planning area designations for this portion of Manchester Township in the future.

Endangered Plant Species

Vegetation represents the most visible element of the essential character of the Pinelands and constitutes the fundamental structure of wildlife habitats, including the habitats of threatened and endangered species. The continued integrity of Pinelands vegetation is essential to the preservation and maintenance of the essential character of the Pinelands. To that end, N.J.A.C. 7:50-6, Part II, of the CMP establishes a vegetation management program designed to limit clearing and soil disturbance activities, encourage revegetation, maximize the use of native shrubs and trees and prohibit development in the vicinity of threatened and endangered plants. N.J.A.C. 7:50-6.27(a) contains a list of 54 plants which were defined by the Commission as threatened or endangered plants of the Pinelands when the CMP was adopted in 1980. At the time, there was no official State list of such plants; therefore, the Commission adopted its own list, specific to the Pinelands. Pursuant to N.J.A.C. 7:50-6.27(a), all development in the Pinelands must be designed to avoid irreversible adverse impacts on the survival of any local populations of threatened or endangered plants.

In 1989, the New Jersey State Legislature declared that “plant species have medicinal, genetic, ecological, educational, and aesthetic value to the citizens of New Jersey” and directed the Division of Parks and Forestry in the Department of Environmental Protection to develop and adopt a list of plant species that are endangered in New Jersey (Endangered Plant Species List Act, N.J.S.A. 13:1B-15.151 et seq.). This Act defined an endangered plant species as “any native plant species whose survival in the State or the nation is in jeopardy.” Rules detailing procedures and setting criteria by which plant species were determined as state endangered were formulated, and a list of state endangered plants was then

proposed (N.J.A.C. 7:5C-1.1 et seq.). The Endangered Plant Species List was adopted in June of 1990 and subsequently modified a number of times, most recently in January of 1995. The List is available on the Department of Environmental Protection's web site at www.nj.gov/dep/parksandforest. There are currently 339 plant species on the Endangered Plant Species List, of which 20 are also listed in N.J.A.C. 7:50-6.27(a) as threatened or endangered species of the Pinelands.

The Commission believes it is appropriate for the CMP to recognize the State's Endangered Plant Species List. Therefore, the Commission is proposing to amend N.J.A.C. 7:50-6.27(a) so as to adopt by reference the State's official list. The effect of this amendment is to provide protection to approximately 60 plant species on the State's list which occur within the Pinelands but were not previously defined as threatened or endangered by the CMP. Thirty-eight of these species are likely to occur within the Pinelands Area where the Commission exercises direct regulatory jurisdiction. It is important to note that the 54 species previously identified by the Commission as threatened or endangered plant species in the Pinelands will continue to be defined as such in N.J.A.C. 7:50-6.27(a). Their status is unaffected by the proposed amendment and will likewise be unaffected by any future changes to the State's Endangered Plant Species List.

Fort Dix Consumer Electronics Recycling Center Pilot Program

N.J.A.C. 7:50-6, Part VII, of the CMP sets forth a waste management program for the Pinelands. The standards and requirements established in this section are intended to supplement Federal and State requirements relative to the use and management of wastes and hazardous and toxic substances in recognition of the vulnerability of the water and other natural resources of the Pinelands. With

respect to hazardous or toxic substances, including hazardous wastes, N.J.A.C. 7:50-6.73(b) provides that no such substance or waste shall be stored, transferred, processed, discharged, disposed or otherwise used within the Pinelands.

“Hazardous Waste” is defined at N.J.A.C. 7:50-2.11 to include any waste or combination of wastes which poses a present or potential threat to human health, living organisms or the environment. It expressly includes all hazardous wastes defined as such by the Department of Environmental Protection and the Environmental Protection Agency as of May 20, 1996 and any other wastes defined as hazardous by the Department or the EPA subsequent to May 20, 1996.

The definition of “hazardous waste” included at N.J.A.C. 7:50-2.11 was deliberately tied to the State’s list of hazardous wastes as of a particular date (May 20, 1996, the effective date of the Commission’s current waste management rules, see 28 N.J.R. 2596(a)). The Commission determined that should the State choose to remove a waste from its list at some point in the future, it did not want such removal to automatically affect the list of wastes which the CMP defines as hazardous in the Pinelands. Rather, the Commission wanted to reserve for itself the ability to individually evaluate whether or not the State’s decision to remove a waste from the list was appropriate for the Pinelands. Given the Commission’s mandate to protect the unique environmental resources of the Pinelands, this departure from a strict reliance on the State’s definition was determined to be appropriate.

Subsequent to the Commission’s adoption of its revised waste management rules in 1996, the Department of Environmental Protection began to reexamine its own approach to the handling of hazardous wastes. The Department came to the conclusion that advances in technology relating to the processing of certain types

of hazardous wastes allowed for their safe and effective recycling, provided it was done according to a specific, controlled regime. Consequently, the Department adopted a series of rule changes between 1996 and 2003 that identified classes of hazardous wastes that could now be recycled and the procedures for doing so. The latest of these rules went into effect as recently as December, 2002 and added “consumer electronics” to the category of “Class D Recyclables.” Consumer electronics are household and business appliances that incorporate circuitry; they include, among other things, computers, printers, stereos, VCRs, televisions and telecommunication devices. Their reclassification by the Department was intended to permit a simpler and more economical means of processing their reusable components.

At the same time, the Department devised a pilot program to test the overall efficiency of recycling such wastes and began issuing temporary “Research, Demonstration and Development Certificates” as part of the evaluation process. These certificates authorized the recycling of specific hazardous waste materials at newly established facilities. Pursuant to its pilot program, the Department of Environmental Protection granted a certificate allowing a consumer electronics recycling center to operate at the federal prison at Fort Dix in 1999. The recycling center in question, as well as all of Fort Dix, is located within the Pinelands Area and included in a Military and Federal Installation Area. However, the Commission was not made aware of this facility’s existence until March of 2003 when it was asked to comment on an amendment to Burlington County’s Solid Waste Management District Plan which was required to approve the center’s operation. Commission staff subsequently met several times with representatives of the DEP who were involved in implementing the State’s program for recycling

Class D materials. DEP is currently monitoring operations at seven such facilities around the State and believes them to be an economical and effective means of reducing the volume of hazardous waste and returning viable electronic components to a useful life.

Because consumer electronics continue to be defined in the CMP as a hazardous waste, their recycling is not permitted in any portion of the Pinelands pursuant to N.J.A.C. 7:50-6.73(b). In recognition of the Department's actions, however, the Commission has determined that it would be appropriate to allow for the continued operation of the existing recycling center at Fort Dix in order to determine whether the State's decision to reclassify consumer electronics as a recyclable hazardous waste is appropriate for the Pinelands. The Commission has further determined that the most appropriate means of doing so is through the establishment of a pilot program. The Fort Dix Consumer Electronics Recycling Center Pilot Program is therefore being authorized as a means to test whether continued operation of the center, if effectively regulated and monitored, would reduce the waste stream to landfills, as well as illegal dumping, and enhance protection of the natural resources of the Pinelands and its unique ecosystem.

The Commission's ability to periodically authorize pilot programs as a means of testing whether or not alternative methods might achieve the goals and objectives which the requirements and standards in N.J.A.C. 7:50-5 and 6 represent is described in subchapter 10 of the CMP. Three such pilot programs have been authorized to date: the Township of Galloway and City of Egg Harbor City Pilot Off-Site Clustering Program (see 28 N.J.R. 4101(b)); the Township of Tabernacle and Township of Pemberton Public Educational Facilities Pilot Program (see 32 N.J.R. 2082(a)); and the Alternate Design Wastewater Treatment

Systems Pilot Program (see 34 N.J.R. 722(a)). Provisions for those pilot programs are set forth in N.J.A.C. 7:50-10, Parts II, III and IV.

A detailed description of the purpose of the pilot program now being proposed is set forth in N.J.A.C. 7:50-10.28, with general standards in proposed N.J.A.C. 7:50-10.29 and evaluation criteria in proposed N.J.A.C. 7:50-10.30. In addition, a definition of “consumer electronics,” identical to that used by the Department of Environmental Protection in its regulations, is being added at N.J.A.C. 7:50-2.11.

Proposed N.J.A.C. 7:50-10.29(a) authorizes the existing consumer electronics recycling center at Fort Dix to continue the recycling of cathode ray tubes and consumer electronics for a period of five years from the effective date of the proposed new rules and amendments. The continued operation of the recycling center will be subject to a number of standards which are enumerated in proposed N.J.A.C. 7:50-10.29(a)1 through 9. These standards range from restrictions on the types, amount, transportation and storage of materials accepted by the center for recycling (N.J.A.C. 7:50-10.29(a)1, 3, 5, 6 and 8) to the maintenance, operation and expansion of the facility itself (N.J.A.C. 7:50-10.29(a)2 and 7). In recognition of the fact that the Fort Dix facility is a recycling facility, proposed N.J.A.C. 7:50-10.29(a)4 specifies that the waste importation limitations of the CMP shall not apply, as is the case in the Pinelands for all recyclables. Finally, proposed N.J.A.C. 7:50-10.29(a)9 requires that the Commission and the Department of Environmental Protection conduct joint annual inspections of the Fort Dix facility during the duration of the pilot program.

Proposed N.J.A.C. 7:50-10.29(b) requires the operators of the Fort Dix facility to provide certain information to the Commission on an annual basis.

Specifically, the tonnage of consumer electronics received at the facility for recycling and the tonnage of consumer electronics sent from the facility for disposal at a landfill must be reported to the Commission.

Proposed N.J.A.C. 7:50-10.30(a) states that the Commission shall approve the development application for the Fort Dix consumer electronics recycling center if otherwise appropriate pursuant to N.J.A.C. 7:50-4 and provided the standards of the pilot program established in N.J.A.C. 7:50-10.29 are met. In other words, although the pilot program itself is unique and governed by special standards, the development approval process for the recycling facility itself will be the same as it is for any public development project in the Pinelands Area.

Proposed N.J.A.C. 7:50-10.30(b) prescribes detailed procedures and requirements pursuant to which an evaluation of the pilot program must be conducted by the Commission's Executive Director. This evaluation of the program must be done three years after the Commission's approval of a development application for the Fort Dix recycling facility. The criteria against which the success of the pilot program is to be judged are specified in proposed N.J.A.C. 7:50-10.30(b)1 through 4. These criteria include the overall operation of the Fort Dix facility and similar Class D consumer electronics recycling facilities elsewhere in New Jersey. This intent of this latter criterion is to provide the Commission with information on any *fundamental* problems which may occur with consumer electronics recycling facilities throughout the State during the duration of the pilot program; it is not the Commission's intent to judge the success of the program based on issues which may arise at such facilities due to negligence or errors on the part of operators. An additional criterion to be used in the evaluation of the pilot program is a reduction in the amount of solid waste returned to the

waste stream for disposal in a landfill. In addition, in order for the pilot program to be deemed successful, the Executive Director must determine that the net effect of the program, when viewed in its entirety, is to further the goals and objectives of the Pinelands Protection Act, the Federal Act and the CMP. This last criterion, set forth at N.J.A.C. 7:50-10.30(b)4, represents an attempt to evaluate the impacts of the pilot program from a broader perspective and is of particular importance for the Commission to consider when determining whether or not to permit the continued operation of the Fort Dix facility and additional consumer electronics recycling facilities within the Pinelands in the future.

Upon completion of the evaluation, the Executive Director will issue a report to the Commission containing findings and recommendations. Should the Executive Director's evaluation of the pilot program indicate that it has been successful, N.J.A.C. 7:50-10.30(d) provides that the Executive Director may propose an amendment to the CMP to allow for the continued operation of the Fort Dix computer electronics recycling facility. The Executive Director may also propose an amendment which would broaden the applicability of the pilot program to other areas in the Pinelands. If the Executive Director's evaluation indicates that the pilot program has not been implemented or has not been successful, N.J.A.C. 7:50-10.30(c) states that the Executive Director shall propose an amendment to the CMP to repeal the pilot program.

As the Commission has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

No adverse social impact is anticipated as a consequence of the adoption of the proposed amendments and new rules. In fact, any social impacts at all are expected to be positive, although somewhat minimal.

The proposed redesignation of management areas in the Oyster Creek and Waretown Creek watersheds will result in a reduction in development potential for the affected areas. However, residential development, albeit at a reduced intensity, will still be permitted to occur. The two affected municipalities, Lacey and Ocean Townships, will be responsible for developing revised zoning plans for the area. These zoning plans could utilize a number of different land use techniques, including cluster development, density transfer and the establishment of multiple zoning districts with differing permitted residential densities. Any specific social impacts are therefore somewhat difficult to predict but it seems clear that a reduction in development potential for this environmentally sensitive area is both appropriate and beneficial. The proposed management area changes have been discussed with representatives of the two affected municipalities and both have indicated their general support. It should also be noted that Ocean Township adopted an amendment to its Master Plan last year which recommends a decrease in permitted residential density throughout the Township's Rural Development Area.

The proposed amendments to the Land Capability Map affecting land in Manchester Township outside the State-designated Pinelands Area merely reflect the terms of a settlement agreement recently signed by the Commission, the Department of Environmental Protection and Hovsons, Inc. While the settlement agreement does not require the Commission to make the management area

changes, the Commission is nevertheless proposing to do so in an effort to facilitate consistency between the CMP and the State Development and Redevelopment Plan. To the extent that such consistency is of social benefit, positive impacts will result.

Adoption of the State's Endangered Plant Species List will provide enhanced protection of some 38 endangered plant species which occur within the Pinelands Area but were not previously defined by the CMP as threatened or endangered. Ensuring the survival of local populations of these important plants will have a positive social impact for generations to come.

With respect to the proposed pilot program, the existing recycling center is located within a tightly controlled and socially unorthodox environment of a prison compound that is completely surrounded by a military installation. As such, the continued operation of the facility will have no discernible impact upon the conventional socio-cultural patterns and practices of the communities in the general vicinity. Furthermore, allowing for the continued operation of the facility will contribute positively, albeit in a minor way, to regional planning for solid waste management.

Economic Impact

Adoption of these amendments and new rules will, on a regional basis, have a minimal economic impact. However, in individual circumstances, economic impacts may be viewed as being more significant. Establishment of the Fort Dix Consumer Electronics Recycling Center Pilot Program may result in positive economic impacts because the pilot program provides an opportunity for continued operation of an existing facility during the duration of the program. The annual reporting requirements which the recycling center must meet are not

expected to result in additional costs, nor is the requirement for annual inspections of the facility by the Commission and the Department of Environmental Protection. Negative economic impacts may result from adoption of the State's Endangered Plant Species List in that land owners proposing to develop their properties will be required to design their projects in such a way as to avoid adverse impacts on an increased number of plants which will now be defined as endangered in the Pinelands. It is worth noting that the majority of these plants are wetlands species; therefore, they and their habitat are already largely protected through the Commission's wetlands management program.

Negative economic impacts may also be expected to result from the redesignation of lands in Lacey and Ocean Townships from a Rural Development Area to a Forest Area as this redesignation carries with it a fairly significant reduction in both residential and nonresidential development potential which will affect owners of vacant land in the area. The exact magnitude of the reduction and resulting impact is difficult to estimate. Recent appraisals in the affected area separated land into two categories: that which has road access and that which does not. Of the privately owned vacant land in the affected area (approximately 2,170 acres), only approximately 1,180 acres or 54% percent has road access. The value of the "inaccessible" land was viewed in the appraisals at roughly \$900 per acre, regardless of its location in a Forest or Rural Development Area. Thus, it would appear that the proposed management area redesignation will not affect the value of this land. The value of the 1,180 acres that have road access depends on what amount of land is necessary, desirable and/or likely to be developed for single family residential use. One appraisal in the area indicated that, all other things considered (environmental constraints, location, comparable sales), development

on 20-acre lots would be likely. If that is indeed the case, the proposed redesignation would have limited impacts on value or actual residential buildout. A second appraisal, while agreeing that inaccessible land should be valued at \$900 per acre, indicated that residential lots would likely be in the range of six to eight acres. Thus, a change to the 20-acre zoning typical in a Pinelands Forest Area might be expected to diminish the value of land with road access by roughly \$1,700 per acre. For the 1,180 acres with road access, this could represent an overall diminution in value in the neighborhood of \$2.6 million. The density transfer program provisions of the CMP (N.J.A.C. 7:50-5.30) could be used to lessen this impact by allowing for the transfer of density from inaccessible areas to those with road access. Also, the State's new Transferable Development Rights legislation might be used to permit the transfer of density from the affected area to other portions of one or both municipalities. Finally, the allocation of Pinelands Development Credits to Pinelands Forest Areas may be considered by the Commission in the near future; this could also serve to reduce the economic impacts of the proposed management area change.

In order to implement the redesignation of management areas in the Oyster and Waretown Creek watersheds, both Ocean and Lacey Townships will need to adopt amendments to their land use ordinances in order to reflect the location of the affected areas within a Pinelands Forest Area. This may be as simple an exercise as modifying the boundary lines on the municipal zoning maps to include the lands in an already existing Forest Area zoning district or it may involve the creation of new zoning districts as well as new programs for clustered residential development and density transfer. The preparation and adoption of such ordinances does represent a cost to the municipalities; however, it is a relatively

minor expense and one which may be partially offset through the Commission's assistance in drafting the necessary ordinances for consideration by the municipalities.

All Pinelands municipalities will be required to revise the vegetation management standards contained in their land use ordinances to reference the State's Endangered Plant Species List. Again, while the adoption of ordinance amendments represents a cost to municipalities, it is expected to be nominal.

Environmental Impact

The CMP was adopted to protect the natural and cultural resources of the Pinelands. The amendments and new rules now being proposed are intended to strengthen the environmental protection afforded under the CMP. Specifically, the redesignation of the Oyster Creek and Waretown Creek watersheds from a Rural Development Area to a Forest Area will result in a reduction in development potential for an area which the Commission believes exhibits the essential character of the Pinelands. Maximum permitted density in the area would be decreased from one unit per 3.2 acres of vacant upland to one unit per 15.8 acres of vacant upland. While the result would be a significant decrease in theoretical residential zoning capacity from approximately 374 homes to approximately 184 homes, the likely practical impact, given environmental constraints and the lack of accessibility of much of the area to public roads, would be a decrease from approximately 204 homes to approximately 92 homes. The CMP does not require that the residential development potential being "lost" from the Oyster Creek and Waretown Creek watersheds be replaced elsewhere in the two municipalities. Such a requirement only applies when zoning changes are made within a Pinelands Regional Growth Area. In this case, lands are being redesignated from a Rural Development Area to

a Forest Area and the CMP requires only that municipal zoning plans be designed so that a density of one unit per 15.8 acres of privately owned, vacant upland is not exceeded. The proposed management area change will therefore result in the construction of fewer homes, meaning less land disturbance, non-point source pollution and fragmentation of the landscape. This will have a demonstrably positive environmental impact.

Likewise, adoption of the State's Endangered Plant Species List by reference is expected to have a positive environmental impact. Additional plant species will now be treated as endangered species in the Pinelands and afforded protection pursuant to N.J.A.C. 7:50-6.27(a).

The proposed Fort Dix Pilot Program may be viewed as having a negative environmental impact since it allows for the recycling of materials which are currently defined in the CMP as hazardous wastes. However, the Commission believes that appropriate and sufficient safeguards have been incorporated in the pilot program to prevent any adverse environmental impacts. Furthermore, only one consumer electronics recycling facility is being authorized at this time, specifically to allow the Commission to determine whether or not any environmental impacts, be they positive or negative, result.

It should be noted that the current "Certificate of Authority to Operate (a) Demonstration Project" issued by the Department of Environmental Protection in March of 2004 for the Fort Dix facility is a temporary permit that will only become permanent upon Commission approval of the facility. The Certificate contains a number of controls intended to minimize any possible environmental impacts. These provisions include limitations on the kinds of wastes accepted and the period they may be stored, restrictions on the transport of the materials, training and

handling requirements for employees, and reporting requirements on the volume of materials received and recovered. The pilot program proposed by the Commission enhances the level of environmental protection afforded by the Department's rules by establishing additional standards for the continued operation of the recycling facility. For example, proposed N.J.A.C. 7:50-10.29(a)1 and 5 impose more restrictive limitations on the amount and type of materials that can be accepted and the time they can be stored at the facility and proposed N.J.A.C. 7:50-10.29(a)3 does not permit transporters of materials destined for the facility to store them in the Pinelands for any period of time. With the imposition of these safeguards, the Commission fully expects that the facility will operate in a manner which protects the natural ecology of the Pinelands.

Federal Standards Statement

Section 502 of the National Parks and Recreation Act of 1978 (16 U.S.C. §471i) called upon the State of New Jersey to develop a comprehensive management plan for the Pinelands National Reserve. The original plan adopted in 1980 was subject to the approval of the United States Secretary of the Interior, as are all amendments to the plan.

The Federal Pinelands legislation sets forth rigorous goals which the plan must meet, including the protection, preservation and enhancement of the land and water resources of the Pinelands. The proposed amendments and new rules are designed to meet those goals by providing protection to those plant species on the State's Endangered Plant Species List, recognizing an area in Lacey and Ocean Townships which exhibits the essential character of the Pinelands, revising management area boundaries to facilitate both development and open space preservation under a recently executed settlement agreement and allowing for the

continuation of one existing recycling facility under the terms of a new pilot program.

There are no other Federal requirements which apply to the subject matter of these amendments and new rules.

Jobs Impact

The proposed amendments and new rules are not expected to cause the loss of any jobs if adopted. Existing jobs may be retained through adoption of the Fort Dix Consumer Electronics Recycling Center Pilot Program as this program provides an opportunity for an existing facility to continue operating for a period of five years. The Fort Dix recycling facility is operated by Federal Prison Industries, Inc., which is a subsidiary of the Bureau of Prisons, and exclusively employs prison labor in the recovery process. By virtue of the nature of its operation, the facility creates the need for positions in the transportation industry to haul the consumer electronics to and from the facility and for several extra prison guards and administrative personnel. By allowing the facility to continue operating during the duration of the proposed pilot program, these jobs will be retained. Overall, however, the amendments and new rules will have a negligible effect on the generation or loss of jobs.

Agriculture Industry Impact

The proposed amendments and new rules are not expected to have any impact on the agriculture industry. Agriculture will remain a permitted use in those portions of Lacey and Ocean Township being redesignated from a Rural Development Area to a Forest Area. The other proposed amendments and new rules will not affect agriculture in the Pinelands.

Regulatory Flexibility Analysis

The proposed amendments and new rules establishing the Fort Dix Consumer Electronics Recycling Center Pilot Program impose minimum reporting requirements on the operators of the existing recycling facility. It is unknown whether the current operators of the facility constitute a small business as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Under the pilot program, the operators of the facility will be required to provide certain information related to the amount of consumer electronics received at and sent from the facility on an annual basis. This data is, in all likelihood, already maintained by the operators of the facility in some fashion; therefore, its dissemination to the Commission should not represent an additional burden.

Businesses involved in land development or land development planning and design will be required to work within the limitations of revised land use ordinances in both Lacey and Ocean Townships as a result of the redesignation of the Oyster and Waretown Creek watersheds from a Rural Development Area to a Forest Area. This is central to their nature of their business, however, and does not represent an additional cost.

Other than the negligible impacts note above, the proposed amendments and new rules impose no reporting, recordkeeping or compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Smart Growth Impact

Executive Order No. 4 (2002) requires State agencies which adopt, amend or repeal any rule adopted pursuant to the Administrative Procedure Act (N.J.S.A. 52:14B-4(a)) to describe the impact of the proposed rule on the achievement of

smart growth and implementation of the New Jersey State Development and Redevelopment Plan (State Plan). The Commission has evaluated the proposed amendments which are the subject of this rulemaking effort to determine the nature and extent of their impact on smart growth and implementation of the State Plan.

The redesignation of management areas in the Oyster Creek and Waretown Creek watersheds is being proposed to recognize an area which is environmentally sensitive and not suitable for intensive development and ensure that this area is afforded an appropriate level of protection through its location in a Pinelands Forest Area. The result will be a reduction in permitted residential densities within the affected area. The Commission will be working with Lacey and Ocean Townships, the two affected municipalities, to design revised zoning plans. To further smart growth, both municipalities will be encouraged to allow for the clustering of permitted residential development in appropriate portions of the redesignated area. The establishment of a density transfer program within the affected area will also be required pursuant to N.J.A.C. 7:50-5.30. In addition, it is possible that the State's new Transferable Development Rights legislation could be used to allow for the transfer of density from the area to portions of Lacey and Ocean Townships located outside the Pinelands Area.

With respect to the redesignation of management areas in Manchester Township, the amendments being proposed by the Commission reflect the anticipated change in state planning area designations for an area in the Pinelands National Reserve subject to a recently executed settlement agreement. This agreement designates a 995-acre development area within an previously mined and disturbed area and requires the permanent protection of approximately 6,475 acres of land in environmentally sensitive areas. Upon the Commission's adoption of

these management area changes and the State Planning Commission's adoption of corresponding changes in planning area boundaries, the maps used by both bodies will be consistent, thereby providing for easier administration of the State Plan within the Pinelands National Reserve.

The proposed adoption of the State's Endangered Plant Species List will provide an increased level of protection to those plants on the list which occur within the Pinelands but were not previously defined as threatened or endangered species in the CMP. This amendment will require development projects to be designed in a way which avoids adverse impacts on local populations of those plants on the State's list. To the extent that development is directed into more appropriate areas as a result, smart growth objectives will have been furthered.

The Fort Dix Consumer Electronics Recycling Center Pilot Program authorizes the continued operation of an existing facility which is accommodated within the fenced compound of a federal prison on the grounds of a long-established military base within the Pinelands Area. Its operation is entirely consistent with a prison labor program and has no impact on the larger planning initiatives of municipalities, counties or the State, other than to contribute positively, albeit in a minor way, to regional planning for solid waste management.

AGENCY NOTE: The maps listed at N.J.A.C. 7:50-5.3(a), showing the proposed revisions to management area designations within the Pinelands, may be reviewed at the office of the Pinelands Commission, 15C Springfield Road, New Lisbon, New Jersey.

Full text of the proposal follows (additions indicated with underlines thus; deletions indicated in brackets [thus]):

7:50-2.11 Definitions

“Consumer electronics” means any appliance used in the home or business that includes circuitry and contains hazardous substances. It includes the components and sub-assemblies that collectively make up the electronic products and may, when individually broken down, include batteries, mercury switches, capacitors containing PCBs, cadmium plated parts and lead or cadmium containing plastics. Examples include, but are not limited to, computers, printers, copiers, telefacsimiles, VCRs, stereos, televisions, and telecommunication devices.

7:50-5.3 Map status

(a) The following maps, the originals of which are maintained at the offices of the Commission, are hereby designated and established as a part of this Plan and shall be as much a part of this Plan as if they were set out in full in this Plan:

- 1.-23. (No change.)
- 24. Land Capability, Plate 28, as amended as of [February 2, 2004] the effective date of these rules;
- 25.-26. (No change.)

7:50-6.27 Development prohibited in the vicinity of threatened or endangered plants

(a) No development shall be carried out by any person unless it is designed to avoid irreversible adverse impacts on the survival of any local populations

of those plants designated by the Department of Environmental Protection as endangered plant species pursuant to N.J.A.C 7:5C-5.1 as well as the following plants, which are hereby found and declared to be threatened or endangered plants of the Pinelands:

1.-54. (No change.)

7:50-10.24 through 10.27 (Reserved)

Subchapter 10. PILOT PROGRAMS

PART V - FORT DIX CONSUMER ELECTRONICS RECYCLING

CENTER PILOT PROGRAM

7:50-10.28 Purpose

- (a) N.J.A.C. 7:50-6, Part VII, contains standards and requirements for waste management which apply throughout the Pinelands. These standards were last revised by the Pinelands Commission in 1996, in part to ensure that hazardous wastes, which were considered not to be recyclable because of the dangers they posed through contamination of the surrounding environment, not be stored, transferred, processed, discharged, disposed or otherwise used in the Pinelands. The Commission elected to adopt a definition of “hazardous waste” which included all hazardous wastes defined as such by the New Jersey Department of Environmental Protection and the Environmental Protection Agency as of May 20, 1996 and any other wastes defined as hazardous by that Department and Agency subsequent to May 20, 1996. The Commission further chose to write its definition in such a way that if the State were to remove a waste from its list of hazardous wastes subsequent to May 20, 1996, such removal would

not automatically affect the list of wastes which this Plan defines as hazardous in the Pinelands. In so doing, the Commission reserved for itself the ability to individually evaluate whether or not the State's decision to remove a waste from the list was appropriate for the Pinelands.

- (b) Subsequent to the Commission's adoption of its revised waste management rules, the New Jersey Department of Environmental Protection began to reexamine its own approach to the handling of hazardous wastes. The Department came to the conclusion that advances in technology relating to the processing of certain types of hazardous wastes allowed for their safe and effective recycling, provided it was done according to a specific, controlled regime. Consequently, the Department adopted a series of rule changes between 1996 and 2003 that identified classes of hazardous wastes that could now be recycled and the procedures for doing so. The latest of these rules went into effect as recently as December, 2002 and added "consumer electronics" to the category of "Class D Recyclables." Consumer electronics are household and business appliances that incorporate circuitry; they include, among other things, computers, printers, stereos, VCRs, televisions and telecommunication devices. Their reclassification by the Department was intended to permit a simpler and more economical means of processing their reusable components. At the same time, the Department devised a pilot program to test the overall efficiency of recycling such wastes and began issuing temporary "Research, Demonstration and Development Certificates" as part of the evaluation process. These certificates authorized the recycling of specific hazardous waste materials at newly established facilities.

(c) Pursuant to its pilot program, the Department of Environmental Protection granted a certificate allowing a consumer electronics recycling center to operate at the federal prison at Fort Dix in 1999. The recycling center in question, as well as all of Fort Dix, is located within the Pinelands Area and included in a Military and Federal Installation Area on the Land Capability Map adopted as part of the Comprehensive Management Plan at N.J.A.C. 7:50-5.3(a)24. Consumer electronics continue to be defined in this Plan as a hazardous waste; therefore, their recycling is not permitted in any portion of the Pinelands pursuant to N.J.A.C. 7:50-6.73(b). In recognition of the Department's actions, however, the Commission determined that it would be appropriate to allow for the continued operation of the existing recycling center in order to determine whether the State's decision to reclassify consumer electronics as recyclable hazardous waste is appropriate for the Pinelands. The Fort Dix Consumer Electronics Recycling Center Pilot Program is therefore authorized as a means to test whether continued operation of the center, if effectively regulated and monitored, would reduce the waste stream to landfills and enhance protection of the natural resources of the Pinelands and its unique ecosystem.

7:50-10.29 General standards

(a) The consumer electronics recycling center currently in operation and located within the boundaries of Fort Dix in New Hanover Township is authorized to continue the recycling of cathode ray tubes and consumer electronics for a period of five years from (the effective date of these rules).

provided its operation is otherwise consistent with the standards of N.J.A.C. 7:50-5 and 6 and subject to the following conditions:

1. The recycling center shall accept for repair and/or recycling only materials which are solid components of cathode ray tubes or consumer electronics. No other hazardous wastes of any kind, and in particular no liquid wastes, shall be accepted for transfer, storage, disposal or recycling or for any other purpose;
2. The recycling center shall at all times be maintained and operated in conformance with the January 22, 2003 amendment to the Burlington County District Solid Waste Management Plan, certified by the Commissioner of the New Jersey Department of Environmental Protection and dated June 25, 2003;
3. Transportation of cathode ray tubes and consumer electronics to and from the recycling center and disposition of the processed product shall be accomplished in accordance with N.J.A.C. 7:26A-7.6, except that a transporter may not store the materials in the Pinelands;
4. The waste importation limitations prescribed in N.J.A.C. 7:50-6.73(c) shall not apply;
5. The total amount of consumer electronics materials accepted for recycling shall not exceed 200 tons per day;
6. No materials intended for recycling or repair shall be stored at the center for more than three months and the total amount of recyclable materials on site at any time shall not exceed 1,000 tons;

7. The recycling center shall not be expanded or modified in any way, except as necessary to facilitate the recycling function prescribed herein and only after written notice has been provided to the Commission and an application for development, if required pursuant to N.J.A.C. 7:50-4, has been approved by the Commission;
 8. Recyclable materials shall be stored in secure, enclosed, weather-tight buildings or containers and the design and operation of the recycling center shall be in accordance with the appropriate standards of N.J.A.C. 7:26A-4.1 through 4.6; and
 9. The New Jersey Department of Environmental Protection and the Commission shall conduct annual joint inspections of the operations of the recycling center, as permitted by N.J.A.C. 7:26A-4.3, during the period the Fort Dix Consumer Electronics Recycling Center Pilot Program is in effect.
- (b) The operators of the Fort Dix consumer electronics recycling center shall, on an annual basis, provide to the Commission the following information:
1. The tonnage of consumer electronics received at the facility for recycling; and
 2. The tonnage of consumer electronics sent from the facility for disposal in a landfill.

7:50-10.30 Pinelands Commission approval and evaluation

- (a) If otherwise appropriate under N.J.A.C. 7:50-4, the Pinelands Commission shall approve the development application for the Fort Dix consumer

electronics recycling center if it finds that the standards of N.J.A.C. 7:50-10.29 are met.

(b) The Executive Director shall review this pilot program three years following the Commission's approval pursuant to (a) above and shall report to the Commission on its implementation. The Executive Director shall determine whether the pilot program is successful in accordance with the following criteria:

1. The facility has operated in a manner entirely and uniformly consistent with the standards of N.J.A.C. 7:50-10.29;
2. There have been no incidents at the Fort Dix computer electronics recycling facility or any other Class D consumer electronics recycling facility in New Jersey which would cause any of the provisions of the contingency plan required by N.J.A.C. 7:26A-4.6(c) to go into effect;
3. The amount of solid waste returned to the waste stream for disposal in a landfill has been significantly reduced; and
4. The net effect of the pilot program, when viewed in its entirety, is that the resources of the Pinelands have been afforded the same or greater level of protection than would be provided by the standards and requirements set forth in N.J.A.C. 7:50-5 and 6.

(c) If the Executive Director finds that this pilot program has not been implemented or has not been successful based on the criteria set forth in (b) above, the Executive Director shall propose an amendment to this subchapter, in accordance with N.J.A.C. 7:50-7, to repeal the pilot program.

- (d) If the Executive Director finds that this pilot program has been successful based on the criteria set forth in (b) above, the Executive Director may propose an amendment to this Plan in accordance with N.J.A.C. 7:50-7 which would allow for the continued operation of the Fort Dix computer electronics recycling facility and broaden the applicability of this pilot program in the Pinelands.